IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.299 OF 2005

Narayank Piraji Kale & Ors. ...Appellants

Vs.

Pandurang Appaji Kale & Ors. ...Respondents

Mr.G.S.Godbole for the Appellants

CORAM: A.S.OKA, J.
DATED: MAY 4,2005.

P.C.:

1. Heard Shri Godbole for the Appellants. He submitted that the earlier suit filed by the Respondent No.9 who is the father of the Appellants was permitted to be withdrawn with liberty to file a fresh suit and therefore the findings recorded by the Trial Court in the said suit are no longer operative. He submitted that there was no evidence of prior partition.

2. The Courts below have considered the entries made in the the revenue record. The Appellate Court has considered the compromise pursis which was filed in Vahivat case filed by the Respondent No.9. The said compromise pursis shows that there was earlier partition. The Appellate Court also held that the revenue record supports the theory of earlier partition effected in the year 1953.

3. In the earlier suit filed by the Respondent No.9 i.e. father of the Appellants-Plaintiffs, a finding was recorded that there was an earlier partition. In an Appeal preferred by the Respondent No.9, the Judgment and Decree of the trial Court was set aside and the Respondent No.9 was granted a liberty to file a fresh suit. That order of Appellate Court was passed on 28th February 1970 and thereafter the Respondent No.9 who is the father of the Appellants did not file a suit for partition. This is a circumstance which was considered by both the courts below for coming to the conclusion that there was a previous partition.

4. The concurrent findings by both the courts below are based on documentary and oral evidence on record. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.